IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7204 of 2007(G)

CR.NO.63/07 OF WADAKANCHERY EXCISE RANGE

PETITIONER/2ND ACCUSED:

GANGADHARAN, S/O.VELUKUTTY,
AGED 45 YEARS, KANDIRATH HOUSE,
KADANGODE, ERUMAPPETTY.

BY ADV. SRI.BENNY VARGHESE

RESPONDENT: COMPLAINANT

THE STATE OF KERALA, REPRESENTING
EXCISE INSPECTOR, WADAKANCHERY EXCISE RANGE,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7204 OF 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He along with the co-accused faces allegations under the Kerala Abkari Act. When both of them were seen by the detecting Excise party, the 1st accused was allegedly carrying 5 litres of arrack and the petitioner herein was allegedly carrying 3 litres of arrack. The 1st accused was apprehended; but the petitioner took to his heels, abandoning the contraband article and could not be arrested. The contemporaneous seizure mahazar and the occurrence report prepared reveal the identity of the petitioner as the 2nd accused as also the culpable acts alleged against him. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that

the petitioner is absolutely innocent. An attempt is made to explain the presence of the name and details of the overt acts against the petitioner in the contemporaneous document by pressing into service a theory of animosity between the petitioner and the 1st accused. It remains in the realm of unsubstantiated assertions. I am satisfied that the opposition by the learned Public Prosecutor is justified. I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the usual course.

3. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of

the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge